

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE

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IN RE: )  
)  
UNITED CITIES GAS COMPANY, a Division )  
of ATMOS ENERGY CORPORATION )  
INCENTIVE PLAN ACCOUNT (IPA) AUDIT )  
)  
PETITION OF UNITED CITIES GAS )  
COMPANY TO AMEND THE )  
PERFORMANCE BASED RATEMAKING )  
MECHANISM RIDER TO ITS TARIFF )

DOCKET NO.  
01-00704

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**MOTION FOR CLARIFICATION OF HEARING OFFICER'S  
ORDER DENYING IN PART AND GRANTING IN PART THE CONSUMER  
ADVOCATE'S MOTION FOR RELIEF UNDER RULE 37.02 OF THE TENNESSEE  
RULES OF CIVIL PROCEDURE**

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The Staff of the Energy and Water Division of the Tennessee Regulatory Authority ("Staff"), pursuant to TRA Rule 1220-1-2-.06 and TRA Rule 1220-1-2-.16(2), respectfully move that the Hearing Officer enter an order clarifying the *Order Denying in Part and Granting in Part the Consumer Advocate's Motion for Relief Under Rule 37.02 of the Tennessee Rules of Civil Procedure* (the "Order").

In its *Consumer Advocate's Objections to the Motion for Approval of Settlement Agreement Filed by Atmos Energy Corporation and the Staff of the Tennessee Regulatory Authority* ("Objections") the Consumer Advocate and Protection Division of the Office of the Attorney General (the "Consumer Advocate") alleges that Staff has attempted an improper "shifting of the burden of proof clearly outlined in Tennessee Code Annotated §§ 65-4-117, 65-5-201 and 65-5-

203.<sup>1</sup> The Consumer Advocate states in a footnote to its *Objections* that it “is requesting that it be allowed to file a reply if it has the burden of proof.”<sup>2</sup>

The Hearing Officer has granted the Consumer Advocate’s request to file such a reply.<sup>3</sup> Given that the Consumer Advocate has stated that its need to reply is based on whether it bears the burden of proof, and given that it has now been given the opportunity to file such a reply, an indirect consequence of the *Order*, if not clarified, may be that of ruling that the Consumer Advocate bears the burden of proof in this matter.

Staff has maintained that it, along with Atmos Energy Corporation, bears the burden of proof to show why the Authority should approve the *Motion to Consolidate and for Approval of Settlement Agreement*. Staff’s position regarding the burden of proof is consistent with TRA Rule 1220-1-2.16(2) which states that “the burden of proof shall be on the party asserting the affirmative of an issue.”<sup>4</sup>

Based on the foregoing, Staff respectfully requests the Hearing Officer enter an order finding that, notwithstanding the partial grant of the relief requested in the *Consumer Advocate’s Motion for Relief Under Rule 37.02 of the Tennessee Rules of Civil Procedure*, Staff and Atmos Energy Corporation retain the burden of proof to establish that the relief requested in the *Motion to Consolidate and for Approval of the Settlement Agreement* should be granted.

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<sup>1</sup> *Objections*, p. 8 (May 17, 2004)

<sup>2</sup> *Objections*, p. 3 n.2 (May 17, 2004)

<sup>3</sup> *Order*, p. 8 (May 26, 2004)

<sup>4</sup> Tenn. Comp. R. & Regs. 1220-1-2-16(2)

Respectfully submitted,

ENERGY AND WATER DIVISION  
OF THE TENNESSEE REGULATORY AUTHORITY



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served via hand delivery or U.S. Mail, postage prepaid, upon the persons listed below this 27<sup>th</sup> day of May, 2004.

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